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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ANDREW F. ABDOU,

Plaintiff and Appellant,

v.

COUNTY OF SAN DIEGO et al.,

Defendants and Respondents.

D053556

(Super. Ct. No. 37-2007-00078533)

APPEAL from a judgment of the Superior Court of San Diego County, Yuri Hofmann, Judge. Affirmed.

Andrew F. Abdou appeals a judgment denying his petition for writ of mandate filed against the County of San Diego, San Diego County Board of Supervisors, San Diego County Health and Human Services Agency (Agency), and Jean M. Shepard, director of Agency, in her official capacity (collectively County). The petition challenged administrative decisions made by County Medical Services (CMS) regarding reimbursement of Abdou's medical expenses as an indigent person pursuant to Welfare

and Institutions Code¹ section 17000. On appeal, Abdou contends the trial court erred by denying his petition because County violated its statutory duty to provide medical services to indigent individuals by refusing his request for direct reimbursement of medical expenses he incurred.

FACTUAL AND PROCEDURAL BACKGROUND

On May 26, 2006, Abdou began receiving chiropractic treatment. On June 6, he received acupuncture treatment.

On June 6, Abdou received treatment for pain in the emergency room at Scripps Memorial Hospital. Apparently on his release from the hospital on June 7, he signed an application for CMS coverage of his emergency room expenses. That form stated in part: "I am aware that this application is to determine my eligibility for financial assistance for this emergency department episode under the CMS program. I also understand that if I require follow-up care, I must first contact CMS for an eligibility appointment by calling 800-587-8118. If I do not qualify for CMS, the hospital may use this information to determine my eligibility for the hospital's financial assistance program."²

Following his emergency room release, but without first applying for CMS eligibility, Abdou sought and received additional medical services during June and early

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

² The administrative record shows Abdou had previously been enrolled in the CMS program from March 1, 2004, through September 1, 2004, and had received benefits when CMS paid for medical expenses he incurred during that period.

July. On June 16, Abdou called Americhoice (apparently CMS's eligibility contractor) and was given an "urgent" appointment for June 22. Americhoice subsequently rescheduled that appointment for June 28. However, Abdou did not attend his appointment on June 28. On July 5, Abdou called Americhoice and obtained a new appointment for August 7.

On July 11, Abdou underwent a cervical discectomy and fusion (to correct a ruptured disc) at an outpatient surgical center. The total cost of the surgery apparently was about \$20,000. He also incurred costs for preoperative testing and postoperative therapy.

On August 7, Abdou attended his eligibility appointment and applied for CMS coverage. Based on an incorrect calculation regarding his income, CMS initially denied his application. On or about August 21, he requested an administrative hearing regarding CMS's denial of his application. He also requested copies of statutes and regulations that governed his eligibility for CMS benefits.

On December 7, Ellen Phillips, a CMS hearing officer, conducted an administrative hearing regarding "[t]he beginning date of [Abdou's] potential CMS eligibility." Phillips found that Abdou's application should be deemed to have been received by CMS on July 5, the date on which he called to schedule a new eligibility appointment. She also found CMS incorrectly calculated Abdou's income, which consisted of \$564 biweekly payments of state disability income. On December 27, Phillips issued a written decision (First Decision) reversing CMS's adverse action denying Abdou's application and granting him CMS coverage from July 1 through

October 31. The First Decision advised Abdou that if he was dissatisfied with the decision, he had 90 days from the date of the decision to seek judicial review pursuant to Code of Civil Procedure section 1094.6.

On or about May 23, 2007, Abdou requested a second administrative hearing, asserting the First Decision did not resolve certain issues. On June 20, Sandra Rivera, a CMS hearing officer, conducted an administrative hearing regarding: "Whether there is jurisdiction to hear the merits of [Abdou's] issue(s):" [¶] 1. The beginning date of eligibility for CMS [coverage]; [Abdou] is requesting retroactive CMS [coverage] for 05/06. [¶] 2. Reimbursement for medical expenses [Abdou] paid while CMS eligibility was being determined." On July 26, Rivera issued a written decision (Second Decision) that found she did not have jurisdiction to consider the first issue of retroactive coverage because the First Decision was final and Abdou had not timely challenged that decision in the trial court. Regarding the second issue, Rivera noted Susan Moreno, a CMS representative, testified at the hearing that "to date, no claims have been submitted for payment for the time period of 07/06 through 10/06." Moreno explained that if Abdou had medical bills for that period, he would need to provide his CMS card to his providers and ask them to submit their claims to CMS. Moreno testified that it was CMS's position it had not taken any adverse action against Abdou. Based on that testimony, Rivera found: "[T]he CMS program is not set up to reimburse clients for bills that they have already paid. The claimant must ask the providers to submit their claims to CMS for payment and the claimant must discuss with the providers about being reimbursed for monies they paid directly to the providers. The County has no jurisdiction over the

providers and their policies." Accordingly, Rivera concluded she had no jurisdiction over either issue and dismissed Abdou's administrative appeal.

On October 29, Abdou filed the instant petition for writ of mandate (Petition) challenging the Second Decision's dismissal of his claims "(1) to have the beginning date of [his] eligibility for [CMS] benefits set as of May 2006, and (2) for reimbursement for medical expenses [he] paid or incurred debts to medical providers . . . while [County] determined [his] CMS eligibility." Alternatively stated, Abdou alleged County "unlawful[ly] refus[ed] to reimburse [him] for the cost of medical care [he] incurred from May 25, 2006 to October 26, 2006 while [he] was entitled to public medical care as indigent and incapacitated during the time [County] was determining [his] eligibility for public medical care." On April 24, 2008, Abdou filed a motion for judgment on the Petition, together with supporting points and authorities. County filed a memorandum of points and authorities in opposition to the Petition.

On May 15, the trial court issued a tentative ruling denying the Petition. Applying its independent judgment, the court found "the hearing officer's decisions are supported by the weight of the evidence." On the first issue, the court found Abdou was barred from challenging the First Decision regarding the beginning date of his CMS eligibility because he did not file a writ petition challenging that decision within 90 days. To the extent Abdou asserted the Petition challenged only the Second Decision's determination of that issue and therefore was timely filed, the court concluded the Second Decision decided only that the hearing officer was without jurisdiction to consider that issue. On the second issue, the court stated: "Based on the Court's review of the administrative

record, however, *it does not appear any adverse action was taken* against [Abdou] with respect to his eligibility and reimbursement under CMS. Furthermore, [his] 'representative' at the hearing . . . admitted [Abdou] had not followed CMS procedures in applying for reimbursement." (Italics added.) The court noted Moreno's testimony at the June 20, 2007, administrative hearing that, "as of that date, 'no claims ha[d] been submitted for payment for the time period of 07/06 through 10/06,' and that if [Abdou] had medical bills for that time period, he would 'need to provide his CMS card to those providers and ask them to submit their claims.' [Citation.]"

On June 12, 2008, the trial court entered a judgment denying the Petition. Abdou timely filed a notice of appeal.

DISCUSSION

I

Standard of Review

"Code of Civil Procedure section 1094.5 governs judicial review by administrative mandate of any final decision or order rendered by an administrative agency. [Citation.] If the decision of an administrative agency substantially affects a fundamental vested right, such as the right to disability benefits, then the trial court must not only examine the administrative record for errors of law, but must also exercise its independent judgment on the evidence. [Citations.] In the appellate court, the appropriate standard of review is the substantial evidence test. [Citations.] Therefore, where the trial court is required to exercise its independent judgment in an administrative mandamus proceeding, the appellate court reviews the record to determine whether the trial court's judgment is

supported by substantial evidence. [Citations.] [¶] Questions of law, on the other hand, are subject to a de novo standard of review. [Citations.]" (*Dobos v. Voluntary Plan Administrators, Inc.* (2008) 166 Cal.App.4th 678, 683.)

II

Indigent Medical Care under Section 17000 Generally

"Section 17000 imposes upon counties a mandatory duty to 'relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident,' when those persons are not relieved and supported by some other means. [Citation.] . . . This statute imposes upon counties a duty to provide medical care to indigent persons not eligible for such care under other programs. [Citation.] [¶] Section 17001 requires each county to 'adopt standards of aid and care for the indigent and dependent poor.' Although this provision confers upon a county broad discretion to determine eligibility for--and the types of--indigent relief, this discretion must be exercised in a manner that is consistent with--and that furthers the objectives of--state statutes. [Citations.]" (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 991, fns. omitted.) Counties are *not* required to "provide the same quality of health care to residents who cannot afford to pay as that available to nonindigent individuals receiving health care services in private facilities. [Citation.] Section 10000 imposes a minimum standard of care--one requiring that subsistence medical services be provided promptly and humanely. [Citation.]" (*Id.* at p. 1014.)

In *Alford v. County of San Diego* (2007) 151 Cal.App.4th 16, we described County's program for providing medical care for indigent persons: "Pursuant to section 17000, the County provides medical care to poor persons, aged 21 to 64, through the

County Medical Services program (CMS). CMS delivers care to the indigent through contracts with private hospitals[,] clinics and health centers. To qualify for CMS, a person must have 'serious health problems,' must be a resident of the County, and must have countable income and resources within CMS limits. As the County's program overview states, 'CMS is the County's safety net program covering adults who are not eligible for Medi-Cal.' " (*Id.* at p. 20.)

III

Pre-application CMS Coverage

Abdou contends the trial court erred by denying his claim that he is entitled to CMS coverage for medical expenses he incurred before he applied for CMS eligibility. He argues County is required to provide CMS coverage for a three-month period prior to his application in manner similar to, or the same as, that required under the Medi-Cal program. (See, e.g., *Conlan v. Bontá* (2002) 102 Cal.App.4th 745, 749, 753-762 [regarding Medi-Cal].) However, because Abdou did not timely challenge the First Decision's determination regarding the beginning date of his eligibility for CMS coverage, we conclude the trial court properly rejected Abdou's claim for pre-application coverage. In the First Decision dated December 27, 2006, the hearing officer concluded: "Based upon the case record, evidence, testimony and regulations, *the beginning date of aid* for [Abdou's] CMS application is 07/06." (Italics added.) Under Code of Civil Procedure section 1094.6, Abdou had 90 days after the issuance of the First Decision in which to challenge that decision by filing a petition for writ of mandate. (Code Civ. Proc., § 1094.6, subds. (a), (b); *Liang v. San Francisco Residential Rent Stabilization &*

Arbitration Bd. (2004) 124 Cal.App.4th 775, 777.) Because Abdou did not timely challenge the First Decision, he has in effect forfeited any challenge to that decision. Accordingly, he could not challenge, either during the second administrative hearing on June 20, 2007, or in the Petition, the First Decision's determination that the beginning date of his CMS aid is July 1, 2006. Therefore, the trial court correctly concluded Abdou was barred from challenging the First Decision regarding the beginning date of his CMS eligibility and is not entitled to CMS coverage for the period before July 1, 2006.³

IV

Reimbursement for Medical Expenses

Abdou contends the trial court erred by denying the Petition because he was entitled to direct reimbursement for medical expenses he incurred while the determination of his CMS application was pending (i.e., from July 1, 2006, through October 31, 2006).

A

As noted above, the Second Decision stated that at the June 20, 2007, administrative hearing, Moreno testified "to date, no claims have been submitted [to CMS] for payment for the time period of 07/06 through 10/06." The administrative

³ In any event, were we to address the merits of Abdou's claim that he is entitled to CMS coverage for medical expenses incurred during the three-month period before July 1, 2006, we likely would not be persuaded by his argument for pre-application coverage. He does not cite any statutory or case authority expressly (or implicitly) so providing. Furthermore, the statutes and cases cited by Abdou in support of his argument are inapposite and unpersuasive.

record shows Moreno testified: "No claims have come in for that period [i.e., July 2006 through October 2006]" Moreno explained that if Abdou had medical bills for that period, he would need to present his CMS card to his providers and ask them to submit claims to CMS. Leonard Krouner, Abdou's authorized representative, stated at the administrative hearing that Abdou was "submitting here today" the additional bills as part of his evidentiary submission. Krouner also testified that he and Abdou "were communicating with CMS in October 2006 asking for the procedure to apply for retroactive reimbursement and CMS has ignored basically every inquiry that we have made" Rivera (the CMS hearing officer) stated: "Now for . . . July and August if you have any bills you need to submit them as she [Moreno] has stated earlier." Krouner replied: "Well[,] we have the bills[.] [W]e are submitting them now." Rivera stated: "No[,] you don't submit them to me because I don't pay them. You have to submit them." Moreno testified it was CMS's position that it had not taken any adverse action against Abdou. In dismissing Abdou's claim for reimbursement of medical expenses in the Second Decision, Rivera in effect adopted CMS's position that there had not been any adverse action taken by CMS against him.

In considering the Petition's challenge of the Second Decision's dismissal of Abdou's claim for reimbursement of medical expenses, the trial court independently considered the evidence admitted at the administrative hearing and concluded "the hearing officer's decisions are supported by the weight of the evidence." In denying the Petition, the court found: "Based on the Court's review of the administrative record, however, *it does not appear any adverse action was taken against [Abdou] with respect*

to his eligibility and reimbursement under CMS. Furthermore, [his] 'representative' at the hearing . . . admitted [Abdou] had not followed CMS procedures in applying for reimbursement." (Italics added.)

B

We conclude there is substantial evidence to support the trial court's finding that CMS did not take any adverse action against Abdou regarding reimbursement of medical expenses incurred during the pendency of its decision on his CMS application. (*Dobos v. Voluntary Plan Administrators, Inc., supra*, 166 Cal.App.4th at p. 683 [substantial evidence standard applies in reviewing trial court's decision on a petition for writ of administrative mandamus].) Code of Civil Procedure section 1094.5, subdivision (a), authorizes the filing of a writ petition for court review (without a jury) of "any *final administrative order or decision* made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal" (Italics added.) It is implicit within that statute that the final administrative decision be adverse to the petitioner. Therefore, for Abdou to prevail on the Petition, he was required to show not only that the Second Decision, but also CMS's initial administrative decision, were adverse to him. In effect, he was required to show CMS took a final adverse action against him for which he may seek writ review in the trial court.

The Petition sufficiently *alleges* a final adverse action taken by CMS. The Petition alleges: "3. This lawsuit challenges [County's] unlawful refusal to reimburse [Abdou] for the cost of medical care [he] incurred [County's] denying [Abdou]

reimbursement for the cost of medical care [he] incurred while [County] determined [his] eligibility for county-funded health care violated the mandates in . . . sections 10000, 10500, and 17000." It further alleges: "4. [Abdou] seeks a writ of mandate invalidating [the Second Decision] dismissing [his] claims . . . (2) for reimbursement for medical expenses [he] paid or incurred debts to medical [providers . . . while [County] determined [his] CMS eligibility."

However, at the June 20, 2007, administrative hearing, Abdou did not present any evidence he, in fact, had actually submitted requests for reimbursement of medical expenses he incurred while his CMS eligibility was being determined. Abdou did not present any evidence he submitted requests for reimbursement either directly to CMS or indirectly through his medical providers as, according to Moreno, CMS procedures provide. On the contrary, there was evidence showing Abdou had not submitted any requests for reimbursement. At the hearing, Moreno testified: "No claims have come in for that period [i.e., July 2006 through October 2006]" Furthermore, as noted above, Abdou *first* presented his medical bills for reimbursement to Rivera, the CMS hearing officer, during the administrative hearing on his appeal of CMS's purported denial of his request for reimbursement. However, as Rivera stated, she was not the proper person to whom reimbursement requests were to be presented. Rivera was conducting an administrative hearing regarding CMS's purported denial of Abdou's request for reimbursement. Absent evidence that Abdou had actually presented a request for reimbursement and CMS had denied such request, Abdou did not carry his burden to prove his allegation that CMS had denied a request for reimbursement. Accordingly, the

Second Decision implicitly found Abdou had not made any request for reimbursement of medical expenses and dismissed his appeal of CMS's purported denial of such request. In effect, the Second Decision found CMS had not taken any adverse action against Abdou.

In independently reviewing the administrative record, the trial court likewise found CMS had not taken any adverse action against Abdou. The trial court concluded "the hearing officer's decisions are supported by the weight of the evidence." In denying the Petition, the court found: "Based on the Court's review of the administrative record, however, *it does not appear any adverse action was taken against [Abdou] with respect to his eligibility and reimbursement under CMS.*"

Based on Moreno's testimony at the administrative hearing that no claims for reimbursement had been received for the July through October 2006 period *and* the absence of any evidence presented by Abdou showing otherwise, we conclude there is substantial evidence to support the trial court's finding that CMS had not taken any adverse action against Abdou in purportedly denying his request for reimbursement of medical expenses he incurred while his eligibility was being determined by CMS.

(Dobos v. Voluntary Plan Administrators, Inc., supra, 166 Cal.App.4th at p. 683.)

Substantial evidence in the administrative record supports a finding that Abdou did not request reimbursement for medical expenses either directly from CMS or indirectly

through his medical providers.⁴ Accordingly, we conclude the trial court did not err by denying the Petition.⁵

Contrary to Abdou's apparent argument, his purported requests to CMS for information regarding procedures for obtaining reimbursement did *not* constitute an actual, or constructive, request for reimbursement of medical expenses. The record does *not* show that in requesting such general procedural information Abdou submitted copies of his medical bills and requested reimbursement from CMS for those bills.⁶ Absent any evidence showing CMS had actual or constructive notice of Abdou's purported request for reimbursement of *specific* medical expenses he had incurred, the trial court properly found CMS had not received, much less denied, any reimbursement requests and therefore had not taken any adverse action against him. Abdou does not carry his burden on appeal to show otherwise.

⁴ For purposes of this opinion, we need not, and do not, address the question of whether CMS's established procedure for obtaining reimbursement of medical expenses (i.e., requiring eligible persons to submit reimbursement requests to their medical providers who, in turn, submit claims to CMS and then refund to those persons amounts paid by CMS) fulfills County's statutory duties to provide indigent persons with medical care, or whether CMS may have a duty to either directly reimburse eligible persons or ensure that medical providers file CMS claims and refund CMS payments to those persons.

⁵ To the extent we are required to apply a de novo--rather than a substantial evidence--standard of review, we nevertheless would reach the same conclusion.

⁶ Likewise, contrary to Abdou's apparent assertion, CMS's purported withholding of all or part of such procedural information did not constitute the adverse action of denying a request for reimbursement of medical expenses. In any event, there is substantial evidence to support an implied finding by the trial court that such purported withholding of information either was not proved or did not constitute a denial of a reimbursement request or other adverse action.

V

Remaining Contentions

Because we affirm the trial court's judgment on the grounds discussed above, we need not address Abdou's contentions that: (1) the court erred in taking judicial notice of part of the Medi-Cal (or CMS) Program Guide; (2) County should be equitably estopped from asserting it did not deny his request for reimbursement; and (3) CMS wrongly applies a rigid income cap in determining an applicant's eligibility for CMS coverage.

DISPOSITION

The judgment is affirmed. County is entitled to costs on appeal.

McDONALD, J.

WE CONCUR:

HUFFMAN, Acting P. J.

IRION, J.